Public Prosecutor v Selvi a/p Sundrum

HIGH COURT (SHAH ALAM) — CRIMINAL TRIAL NO 45–70 OF 2004
KN SEGARA J
8 MAY 2006

Criminal Procedure — Sentence — Mitigating factors — Culpable homicide not amounting to murder — Victim of circumstances — Provocation — Plea of guilty — Public interest

The accused, an Indian national, was charged for the murder of one Rajam a/p Ganaprakasam, an offence under s 302 of the Penal Code. The accused claimed trial. Subsequently, the prosecution tendered an alternative charge under s 304(a) of the Penal Code. The accused pleaded guilty to the alternative charge after same was read and explained to her. The court, accordingly, found her guilty on the amended charge, and convicted her. After considering her plea in mitigation and the facts relating to the commission of the offence, she was sentenced to four years imprisonment from the date of her arrest.

Held:

The accused was a victim of circumstances. She should be given a chance to start her life afresh by sending her back to her country as soon as possible. A long period of incarceration would not be in the public interest, in the circumstances of the case (see para 6). All that was stated by the accused in her mitigation were true. She appeared to be at the mercy of the deceased in this country and with no one to turn to for any help. Her travel documents had been retained by the deceased. The accused was provoked and her reaction was understandable, but nevertheless, she has committed a serious offence, quite unintentionally, for which she totally regrets. She has shown her remorse by pleading guilty immediately and without hesitation to the alternative charge. In such circumstances, a sentence of four years imprisonment was appropriate to ensure a speedy return to her native land. She will not be a danger to the Malaysian public upon her release. An unnecessarily lengthy imprisonment was an unwarranted financial burden for the Government, which was not justified in the particular circumstances of this case, and is not in the public interest (see para 10).

[Bahasa Malaysia summary

Tertuduh, seorang warganegara India, telah dituduh kerana membunuh Rajam a/l Ganaprakasam, satu kesalahan di bawah s 302 Kanun Keseksaan. Tertuduh telah

menuntut perbicaraan. Berikutan itu, pihak pendakwa telah menenderkan satu pertuduhan alternatif di bawah s 304(a) Kanun Keseksaan. Tertuduh telah mengaku bersalah terhadap pertuduhan alternatif itu selepas yang sama telah dibaca dan diterangkan kepadanya. Mahkamah, sewajarnya, telah mendapati beliau bersalah atas pertuduhan yang dipinda, dan menyabitkannya. Setelah menimbangkan rayuan beliau dalam mitigasi dan fakta-fakta yang berkaitan dengan perlakuan kesalahan itu, beliau telah dijatuhkan hukuman empat tahun penjara daripada tarikh tangkapannya.

Diputuskan:

Tertuduh merupakan mangsa keadaan. Beliau sepatutnya diberi peluang untuk memulakan hidup baru dengan menghantarnya pulang ke negara asalnya secepat mungkin. Tempoh lama pemenjaraan bukanlah demi kepentingan awam, dalam keadaan kes ini (lihat perenggan 6). Segala yang dinyatakan oleh tertuduh dalam mitigasinya adalah benar. Beliau kelihatan bergantung kepada belas kasihan si mati dalam negara ini dan dengan tiada sesiapa untuk berpaling meminta bantuan. Dokumen-dokumen perjalanannya telah dipegang oleh si mati. Tertuduh telah dibangkitkan kemarahannya dan reaksinya boleh difahami, namun begitu, beliau telah melakukan satu kesalahan serius, meskipun tanpa niat, yang mana beliau amat kesali. Beliau telah menunjukkan rasa sesal dengan mengaku bersalah dengan segera dan tanpa teragak-agak terhadap pertuduhan alternatif itu. Dalam keadaan sedemikian, satu hukuman empat tahun penjara adalah sesuai untuk memastikan kembalinya ke negara asalnya dengan segera. Beliau tidak akan membahayakan masyarakat awam Malaysia setelah pembebasannya. Pemenjaraan yang panjang merupakan beban kewangan yang tidak wajar ke atas Kerajaan, yang tidak dijustifikasikan dalam keadaan khudus kes ini, dan bukan demi kepentingan awam (lihat perenggan 10).]

Notes

For cases on mitigating factors, see 5(1) *Mallal's Digest* (4th Ed, 2004) paras 3574–3605.

Legislation referred to

Penal Code ss 302, 304(a), (b)

Wan Shaharuddin bin Wan Ladin (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.

Sreekant Pillai (Sreekant Pillai) for the accused.

KN Segara J:

[1] The accused, an Indian National, was charged for the murder of one Rajam a/p Ganaprakasam, on 3 November 2003 at about 9am at No 287-B, Kampung

Lindungan, Sungei Way, Petaling Jaya, an offence under s 302 Penal Code (see exh P2). The accused claimed trial. A

[2] On 8 May 2006, the prosecution tendered an alternative charge under s 304(a) Penal Code (see exh P3). The accused pleaded guilty to the alternative charge after same was read and explained to her. She understood fully the nature and consequences of her plea. She was represented by an assigned counsel. B

[3] She admitted to the facts and exhibits tendered by the learned DPP as correct. The court, accordingly, found her guilty on the amended charge, and convicted her. After considering her plea in mitigation and the facts relating to the commission of the offence, she was sentenced to four years imprisonment from the date of her arrest. C

[4] The facts tendered by the prosecution are as follows:

> Ketika berada di rumahnya beralamat No. 297-B, Kampung Lindungan, Sungei Way, Petaling Jaya pada 3 November 2003 jam lebih kurang 9.00 pagi, Selvi a/p Sundrum (selepas ini dirujuk sebagai 'OKT') telah didatangi Rajam a/p Ganaparkasam (selepas ini dirujuk sebagai 'si mati') dan Muthu Letchumi. Ketika itu OKT berada di dalam salah sebuah bilik di rumah tersebut. D
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> Si mati kemudiannya telah meminta OKT untuk membayar wang sebanyak RM50 yang mana OKT telah berhutang kepada si mati dan si mati juga minta OKT memulangkan radio milik si mati yang dipinjamkan kepada OKT. OKT memberitahu si mati yang beliau tiada wang untuk membayar hutangnya kepada si mati. Ini telah membuatkan si mati marah dan si mati menyuruh OKT pergi meniduri mana-mana lelaki untuk mendapatkan wang RM50 tersebut. E
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> Ini telah membuat OKT berang dan OKT telah mengambil satu penyodok sampah di luar rumah untuk memukul si mati. OKT kemudiannya telah memukul si mati dengan penyodok sampah tersebut. Si mati pula telah mengambil sebatang mop dan telah memukul OKT. Ketika itu seorang penghuni di rumah tersebut telah keluar dari biliknya dan telah merampas penyodok sampah itu dari tangan OKT. Manakala Muthu Letchumi telah memegang OKT bagi meleraikan pergaduhan diantara OKT dan si mati. F
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> Si mati kemudiannya telah memukul kepala OKT dengan kayu mop tersebut dan melihat kepala OKT yang berdarah, Muthu Letchumi telah melepaskan OKT. OKT kemudian telah menghampiri si mati yang ketika sudah memegang sebilah pisau. Si mati terus menyerang OKT menggunakan pisau tersebut dan telah mencederakan OKT di bahagian tangan OKT. OKT telah menepis serangan tersebut dan telah berjaya mengambil sebilah pisau lagi yang berada di atas meja dan telah menikam dada si mati sekali dengan pisau tersebut. Ini telah menyebabkan si mati terduduk di dalam keadaan berlumuran darah. G H
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> OKT kemudiannya ingin berjumpa ketua kampung untuk memberitahu tentang kejadian. Ketika itu pihak polis telah sampai dan telah menangkap OKT.
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> Bedah siasat telah dijalankan ke atas mayat si mati dan si mati telah disahkan mati akibat luka tikaman di bahagian dada. I

[5] It is quite obvious, from the facts tendered by the prosecution, that the accused was provoked by the deceased and that there was a sudden fight. There was clearly

no intention to kill the deceased by the accused. The accused was clearly acting in self-defence, as well, because the deceased had seized upon a knife to attack the accused. The accused herself had been injured on the head and was bleeding. The facts seems to suggest an offence punishable under s 304(b) rather than s 304(a) Penal Code. Of the two knives tendered, as exhs P8 and P9, one of them was a very small knife. Who used which knife in this fight is not known, and neither was there any evidence as to which of the two knives caused the fatal injury.

[6] After considering her plea in mitigation and the facts surrounding the commission of the offence, I was of the opinion that the accused was a victim of circumstances. She should be given a chance to start her life afresh by sending her back to her country as soon as possible. A long period of incarceration would not be in the public interest, in the circumstances of the case.

[7] The accused is a foreigner with no relatives or friends in this country. She had come to this country from India about eight months before the incident, through an agent, to seek greener pastures after obviously being misled. Her parents had passed away. Her husband had left her for another woman, leaving her to fend for herself and her two children, aged 14 and 15. She left her children under the care of a friend and came to Malaysia, using up all her savings to make the trip through the agent.

[8] From the plea in mitigation, it would appear that when the accused arrived in Malaysia in February 2003, she was sent by the agent to work with the deceased, who was herself an Indian national, as a labourer cleaning the highways. The deceased did not pay her the daily wages she was entitled to and even held back her travel documents. Several months later she ran away from the deceased and worked in a restaurant in Brickfields, but her employment was terminated two months later, when it was discovered she was a foreign national and did not have any documents. With nowhere else to go, she returned to the deceased for work. She had no choice. All her travel documents were in the hands of the deceased.

[9] On 3 November 2003, the deceased demanded that the accused return a radio and RM50 which the accused had borrowed, but the accused could not comply with the demand. The accused lost her temper when the deceased suggested that she prostitute herself to earn enough money to pay for the radio and the RM50 she owed. She grabbed a dustpan and attacked the deceased, who armed herself with a mop. They traded blows. The accused was bleeding from a head wound when she attacked the deceased, who having picked up a knife, slashed the accused on the arm. The accused grabbed a knife and stabbed the deceased in the chest.

[10] I am inclined to believe all that was stated by the accused in her mitigation, as true. She appeared to be at the mercy of the deceased in this country and with no one to turn to for any help. Her travel documents had been retained by the deceased. The accused was provoked and her reaction is understandable, but nevertheless, she has committed a serious offence, quite unintentionally, for which she totally regrets. She has shown her remorse by pleading guilty immediately and without hesitation to the alternative charge. In such circumstances, a sentence of four years imprisonment is appropriate to ensure a speedy return to her native land. She will not be a danger

to the Malaysian public upon her release. An unnecessarily lengthy imprisonment is an unwarranted financial burden for the Government, which is not justified in the particular circumstances of this case, and is not in the public interest.

Order accordingly.

Reported by Peter Ling